



## King's Research Portal

DOI:

[10.1093/jleo/ewn021](https://doi.org/10.1093/jleo/ewn021)

*Document Version*

Publisher's PDF, also known as Version of record

[Link to publication record in King's Research Portal](#)

*Citation for published version (APA):*

Skarbek, D. (2010). Putting the "Con" Into Constitutions: The Economics of Prison Gangs. *Journal of Law, Economics, & Organization*, 26(2), 183-211. <https://doi.org/10.1093/jleo/ewn021>

### **Citing this paper**

Please note that where the full-text provided on King's Research Portal is the Author Accepted Manuscript or Post-Print version this may differ from the final Published version. If citing, it is advised that you check and use the publisher's definitive version for pagination, volume/issue, and date of publication details. And where the final published version is provided on the Research Portal, if citing you are again advised to check the publisher's website for any subsequent corrections.

### **General rights**

Copyright and moral rights for the publications made accessible in the Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognize and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the Research Portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the Research Portal

### **Take down policy**

If you believe that this document breaches copyright please contact [librarypure@kcl.ac.uk](mailto:librarypure@kcl.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.

# Putting the “Con” into Constitutions: The Economics of Prison Gangs

David Skarbek\*  
George Mason University

This paper investigates the internal governance institutions of criminal enterprise by examining the law, economics, and organization of the *La Nuestra Familia* prison gang. To organize effectively within the confines of penitentiaries, the gang needs to provide a credible commitment for member safety to potential entrants and a means of preventing predation and misconduct within the gang. I analyze the governance structure outlined in the gang's written constitution and show how it solves the collective action problems associated with multilevel criminal enterprises. (JEL D23, K42, L23, P16)

If I go forward, follow me.  
If I hesitate, push me.  
If I am killed, avenge me.  
If I am a traitor, kill me.  
(from the membership oath of *La Nuestra Familia*)

## 1. Introduction

The California-based prison gang, *La Nuestra Familia*, uses violence to profit from illicit activities inside and outside of prison. Although one of the most ruthless, it is also one of the most regimented prison gangs in California, leading a former federal prosecutor to describe their organization as being as sophisticated as a Fortune 500 company (Hunt et al. 1993: 399; 60 Minutes 2005).

Criminal enterprises face organizational problems that legitimate firms do not. Most importantly, due the illegal nature of their activities, organized crime cannot rely on state enforcement of contracts and protection of property rights.

---

\*George Mason University, Department of Economics, 4400 University Drive, MSN 3G4 Fairfax, VA 22030. Email: dskarbek@gmu.edu.

The author thanks two anonymous referees; Bruce Benson, Peter Boettke, Christopher Coyne, Jack Estill, Roberto Galbiati, Peter Leeson, Edward Lopez, Benjamin Powell, Matt Ryan, Emily Schaeffer, Edward Stringham, Daniel Sutter, Werner Troesken, Richard Wagner; participants at the Back Row Seminar and Graduate Student Paper Workshop at George Mason University; participants at the European School on New Institutional Economics 2008 conference; and participants at the Public Choice Society annual meeting in 2008 for helpful comments. The standard disclaimer applies. He gratefully acknowledges generous research support from the Earhart Foundation and the Mercatus Center.

The safety and property of the members themselves are not secure. Like many other manifestations of organized crime, the *Nuestra Familia* (NF) prison gang requires members to join for life. When exit from a criminal organization is prohibitively costly, there is a potential for criminal leaders to abuse their authority. Organizations that require lifelong commitment by members must assure them that this power will not be abused. Just as government can predate on its own citizens—what Weingast deems the “fundamental political problem” (1995)—so can gangs predate on its own members. Empowering a leadership authority to organize and manage the pursuit of criminal profits requires also compelling it to constrain itself.

Organized crime takes many different forms. Some organizations provide goods to voluntary consumers (such as narcotics, gambling, and prostitution services) and others seek to gain the benefits from coordinating coercion, thievery, and physical violence against unwilling victims (home invasion robberies, burglary, and murder). Past research has defined organized crime by the monopoly control of a market (Schelling 1971), an organizational hierarchy and engagement in multiple criminal activities (Reuter 1983), and by the particular goods and services an organization provides (Task Force on Organized Crime 1967). This article avoids these narrow definitions of organized crime and instead adopts the more general definition of organized crime as “any long-term arrangement between multiple criminals that requires coordination and involves agreements that, owing to their illicit status, cannot be enforced by the state” (Leeson 2007a: 1052).

Since Becker’s seminal article (1968), economists have developed several distinct lines of research on crime, focusing mainly on its economic impact, policing it, and the factors that lead to it. Fiorentini and Peltzman (1995) provide an excellent collection of essays focused specifically on the economics of organized crime (See also Anderson 1979; Reuter 1983; 1987; Jennings 1984; Arlacchi 1986; Jankowski 1991; Dick 1995; Konrad and Skaperdas 1998; Garoupa 2000; Skaperdas 2001, Chang et al. 2005; Sobel and Osoba 2008).

Despite the growing literature on these topics, few economists have researched the governance institutions of organized crime and the potential for predation. Levitt and Venkatesh (2000) come close in their eye-opening examination of the finances of a Chicago street gang, though their focus is on identifying the monetary incentives of intragroup organization. Reuter (1983) examines the markets that the New York Italian Mafia served, but he focuses primarily on how the group interacts with nongroup members. Leeson (2007a) identifies the problem of internal predation in the context of 17th and 18th century pirates, and he shows that sailors relied on written constitutions to coordinate control of predation by captains.<sup>1</sup> Leeson’s historical account provides a fascinating look at the mechanisms deployed to manage intragroup conflict. This article examines the predation problem in a modern

1. Leeson (2008a, 2008b, 2008d) discusses the “pirationality” behind numerous other pirate practices.

context—prison gangs—and identifies the efficient governance institutions that arise in a contemporary environment.

Organized criminal enterprises often act as quasi-governments, protecting property rights and enforcing contracts when legitimate governments are not capable or willing to do so (Anderson 1979; Baumol 1995; Skaperdas and Syropoulos 1995). Skaperdas (2001) surveys the historical experiences of organized crime in several countries and concludes that it arises in power vacuums to fill the need for property protection. Gambetta's (1993) detailed study shows that the Sicilian Mafia primarily provided businesses with private protection services when the government was unable to. Sobel and Osoba (2008) find empirically that membership in Los Angeles street gangs are a response to violence rather than precipitating it, suggesting that members join to protect themselves when the legitimate government does not.<sup>2</sup>

Both organized crime and legitimate governments wield a monopolistic control over coercion, so both groups' members face the problem of internal predation. Sutter notes the difficulty of constraining predation: "delegating a near monopoly on the means of coercion to government creates potentially serious agency problems" (1997: 140). He identifies five problems with enforcing constitutional constraints. First, it is costly to detect violations. Second, complicated constitutions require assurances about the sincerity of interpretation on the part of experts. Third, once violations are detected, there must be mechanisms in place for preventing or correcting them. Fourth, limiting constitutional violations is a public good, so people have a tendency to free ride on its provision. Fifth, people may have difficulty coordinating enforcement. Solving these five problems is required for the successful enforcement of constitutional constraints.

Understanding the mechanisms used to overcome these problems in the context of organized crime has been difficult because researchers do not have access to information about the actual internal workings of organized crime. Naturally, criminals are hesitant to provide incriminating information to researchers that could subsequently become available to law enforcement officials. This article overcomes the problem of "getting inside" by examining a prison gang's written constitution, which gives a detailed outline of the formal rules by which the organization operates, and thus provides a unique look into the internal governance of organized crime. The constitution is reprinted in Fuentes (2006) and described in Lewis (1980), Hunt et al. (1993), as well as the "La Nuestra Familia" file provided by the Federal Bureau of Investigation under the Freedom of Information Act. In addition, information about the operation of the prison gang is obtained by examining a collection of documents, including Federal Grand Jury testimony, court documents, internal police reports, and the personal correspondence and documents of a NF leader-turned-informant.

This article shows that the NF prison gang solves the internal predation problem by credibly committing safety to potential members and controlling

2. Research on the role of gangs as quasi-governments is connected more broadly to a theoretical and empirical literature on self-governance (Benson 1990; Leeson 2007b; 2008c; 2008e; Stringham 2007; Powell et al. 2008).

subordinates in dispersed, hierarchical institutions with a system of checks and balances. These mechanisms are successful because they provide each member of the gang with the ability to monitor predation, an incentive to stop it, and a mechanism for doing so.<sup>3</sup>

The article is arranged as follows. Section 2 reviews the history and basic governance structure of the gang. Section 3 models the predation problem faced by a multilevel organization. Section 4 examines the specific governance institutions the gang uses to overcome the collective action problem of limiting predation and misconduct. Section 5 concludes.

## 2. The History and Organizational Structure of NF

NF is a highly organized criminal enterprise that began in California prisons and has spread beyond the walls into Northern California neighborhoods and correctional facilities in other states (Koehler 2000; Federal Bureau of Investigation 2008: 10). In the mid-1960s, they formed in Soledad State Prison to protect themselves from belligerence by The Mexican Mafia prison gang (California Department of Justice 2003: 15). The Mexican Mafia had been “in charge of every drug transaction and prison pleasure” as well as, victimizing Hispanic inmates, who could not “safely take showers” and had their guests harassed during visiting hours (Fuentes 2006: Introduction). As an indication of their presence, in 1972, the Mexican Mafia committed 30 out of 36 murders in the California prison system (Gaes et al. 2002: 360).

Membership in the Mexican Mafia, however, often did not guarantee an inmate’s safety and internal predation occurred regularly. Mexican mafia leaders “... forced some of their own members to pay rent for their assigned cells ... [and] members in other prisons had similar complaints of extortion and abuse. Many came to the horrible realization that membership provided little advantage” (Fuentes 2006: Introduction). A letter written by one NF leader to another states that “Those who seek to destroy and undermine our *raza*’s [people’s] efforts to rise above their standards of living have through their own actions made it possible for us and other groups like us to come together” (Fuentes 2006: 37).<sup>4</sup> NF formed to counter the Mexican Mafia’s abuse.

3. Identifying the mechanisms used sheds light on criminal enterprise more generally and to noncriminal organizations with self-governing institutions. For example, Radford (1945) relays his experience with the economic organization of a P.O.W. Camp where he argues that exchanges, once appropriately modified for the abnormal environment, appear fully rational and similar to traditional markets. By understanding the economy in these camps, Radford illuminates aspects of more traditional markets.

4. Fuentes (2006) recounts the life of Robert Gratton, who was, at one time, the third highest ranking member of NF. He testified in Operation Black Widow, a federal case against NF and joined the Witness Protection Program. Although Nina Fuentes is listed as author, a news interview of Gratton in 2003 indicates that he was writing an autobiography of the same title (Berton 2003). The publisher confirmed in personal correspondence “Mr. Gratton was heavily involved with the project.” This book, then, provides a unique source of documents, personal correspondence, and perspective about NF governance institutions.

Rural Northern California Hispanics grouped together and formed the Blooming Flower, which later changed its name to La Nuestra Familia. Started largely by incarcerated Vietnam veterans, NF developed a military-style hierarchical structure (Nuestra Familia, Our Familia 2007)<sup>5</sup>. One prominent member, Robert "Babo" Sosa, already recognized as the NF leader, became the first General Elect. Once in charge, Sosa "drafted a very sophisticated constitution with objectives and bylaws" (Fuentes 2006: 3). The organization recruited members, in part, with promises that unlike the Mexican Mafia, they would not abuse their newly inherited authority (Fuentes 2006: 19). The rhetoric surrounding the formation of the organization was to obtain unity and equality, to be the "voice of the people throughout the prison system" (Fuentes 2006: 11). Private correspondence between two incarcerated NF leaders illustrates the rhetoric typical of the group: "[the governing council] have remained loyal to the mob, as well as to the people, because the people put them there and can vote them out" (Fuentes 2006: 186).

In 1977, a report to the California Senate by the Subcommittee on Civil Disorder reported that NF is the "second most populous and powerful organization in the prison system" (Federal Bureau of Investigation 2008: 13). Estimates of membership range from 400 to 600 incarcerated members; in addition, there are more than 1000 "associates," who though not permanent members, assist in NF activities inside and outside of prison (Lewis 1980: 133; Fuentes 2006: 297).

NF's governance structure is found in their constitution, titled "The Supreme Power Structure of La Nuestra Familia" (reproduced in the Appendix). One NF member states "It was like the United States Constitution, but it was *our* constitution" (Nuestra Familia, Our Familia 2007). It designates a four-level hierarchy: a General, Captains, Lieutenants, and Soldiers (see Figure 1). Originally, one General governed the incarcerated members. He commanded up to 10 captains, who usually resided in different prison facilities. Each Captain commanded Lieutenants and Soldiers in their respective correctional facilities.<sup>6</sup>

5. In addition to the organizational structure, other attributes of the gang reflect the military background of its founders. For example, all NF members are required to participate daily in the synchronized work out regiment known as *La Machina* (The Machine).

6. A written constitution or by-laws are not uncommon among criminal gangs. Jankowski finds that out of the 37 street gangs he studied, 22 had some form of written codes regulating members' behavior, some of which were specifically designed to prevent internal predation (1991: 78–82). There is limited evidence about the internal rules of other prison gangs, but the available evidence does suggest functional similarities to the NF organization. The Gangster Disciples, for example, have internal rules for their incarcerated members that prohibits theft or destruction of other members' property, arguments during sports activities, and exploitation of other members (Knox and Fuller 2004: 20). It appears that NF is not unique in their governance institutions. The organization is uniquely informative, though, because of the level of detail provided in their constitution and the availability of multiple sources of evidence about it.

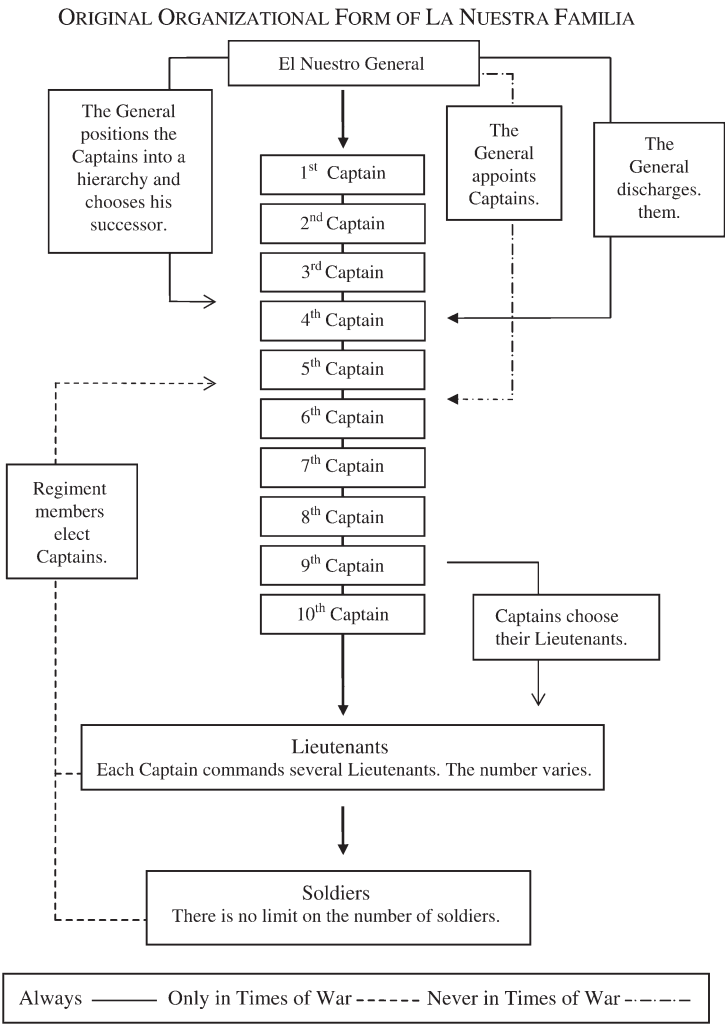


Figure 1. Original Organizational Form of La Nuestra Familia.

NF profits from a variety of illegal activities. Their incarcerated members profit from dealing drugs, extortion, robbery, illegal gambling, racketeering, and smuggling contraband (California Department of Justice 2003: 15). NF documents obtained by the FBI, for example, indicate that one inmate sold methamphetamine narcotics for 200 to 300 dollars per ounce in the main prison cellblock (Fuentes 2006: 242). Outside of prison, the main source of income for NF comes from the proceeds derived from distributing drugs, armed robberies, burglaries, and home invasion robberies (California Department of Justice 2004: 9). According to one long-time NF member, membership “gives you more power, more knowledge, insight and protection” (Fuentes 2006: 262).

As a Grand Jury indictment indicates, the membership confirmation process is elaborate:

Usually membership was approved only after a period of indoctrination by Nuestra Familia members in which prospects were schooled and then tested. . . . about Nuestra Familia criminal activities, including the manufacture of prison weapons, or "shanks," and the commission of murder, robbery and drug dealing inside and outside of prison. Only those who evinced both a knowledge of, and willingness to participate in, these activities were eligible for membership. This perpetration of violence and other crimes was ordinarily a prerequisite to membership in the organization, and membership, once achieved, was for life, as symbolized by the organization's membership phrase, 'blood in, blood out.' (Fuentes 2006: 296).

Members have to spill the blood of an enemy to join, and the only way for most members to leave the gang is death.<sup>7</sup> Once inmates join NF, all members swear allegiance to the organization and its constitution.

In general, inmates do not have the option of joining any prison gang they wish to, and many inmates choose not to join a gang at all. Prison gang membership is confined primarily to individuals of a particular race, and some gangs require that an inmate be from a particular geographic region. Nearly all individuals in NF are of "Latin extraction" and from Northern California. Other Hispanic prison gangs, such as the Southern California-based Mexican Mafia, rarely allow Northern California Hispanics to join. These requirements result in prison gangs with some monopsony power.

Restricting access to particular ethnicities and geographic regions yields several benefits, primarily from homogeneity among members. Homogeneous members who share similar socio-economic and cultural background have lower communication costs.<sup>8</sup> After release, NF members can more easily monitor each other and ensure fulfillment of gang responsibilities. Geographic proximity and social connections lower the costs of obtaining information while recruiting potential members. Members who violate the gang's rules can less easily return to familiar communities to take advantage of family ties and the social capital accumulated in legal and illegal occupations (Putnam 2000). This increases the relative cost of deserting or betraying the gang.

7. Many prison gangs require lifetime commitments. Several factors suggest this requirement is efficient. Lifetime membership reduces communication costs because there is less risk of members informing law enforcement or rival criminal organizations about sensitive material after they leave the gang. Lifetime membership allows the organization to internalize the benefits from investments in members' human capital. A gang's reputation can reduce the costs of engaging in business, and if members are allowed to leave the gang, it may be more difficult to maintain their reputation because other inmates are unsure of who is a member.

8. Abe (1983) discusses the different cultural perceptions of what constitutes effective communication; a related economics literature examines the effects of social distance (e.g., social class) on interactions (Akerlof 1997).



The absence of multiethnic gangs suggests the benefits from homogeneity are substantial.<sup>9</sup> Homogeneity of agents complements the mechanisms outlined below in limiting internal predation.

From the organization's point of view, equilibrium membership size obtains when the marginal benefit that the organization's members receive from additional members are equal to the marginal cost incurred. Group members benefit from the accrual of profits from illicit activities by incarcerated and paroled members. Additionally, incarcerated members increase the gang's ability to engage in warfare with other prison gangs and prison officials.

There are several costs to the organization from accepting additional members. First, because the organization engages in illegal activities, there is potential for members to inform authorities about their activities. Second, conspiracy laws make each co-conspirator in NF responsible for reasonably foreseeable crimes committed by all other members (*Pinkerton v. United States*, 328 U.S. 640 [1946]). Third, members receive protection in prison and access to the organization's resources. Last, members' behavior affects the gang's reputation, so allowing low-quality members to join can reduce the average quality of the gang in other inmates' eyes. NF will accept new members when the expected benefit exceeds these expected costs.

The NF leadership weighs the benefits and costs from allowing additional members to join. Prison gangs limit membership by race, location, and region, so they have monopsony power in hiring inputs, and competition among prison gangs for members is not a sufficient check against internal predation. Moreover, enabling certain individuals with the power to coerce autonomously is actually a productive input into the organization's production. Competition will not remove the potential for predation, so how can potential members gain assurances that they will not be preyed upon?

### 3. The Prisoner's *Other* Dilemma

#### 3.1. Overview

An individual inmate faces the problem of how to remain safe while in prison. Sometimes the solution is to join a gang. A prison gang can protect the individual from other inmates and other prison gangs; however, in Madisonian fashion, a gang strong enough to protect an inmate is also strong enough to predate upon him.

Following Bowker (1980), I define predation broadly as including not just physical abuse, but psychological, economic, and social victimization. This includes specific acts such as extortion, rape, theft, pimping, and forcing someone to hold contraband or violate other correctional facility rules. More generally, though, all members bear the costs of the choices made by gang leaders. Members will suffer if their leaders recklessly order them to risk their lives or

9. At times, gangs do make exceptions to these requirements. The NF constitution states "... other extractions (races) will be considered with the consent of both the captain and NG" (Art. 5, Sec. 4). These exceptions do prove the rule, but the absence of multiethnic prison gangs suggests the advantages from limiting membership by race and geographic origin outweigh the costs.

command them to do so for personal reasons. Like all gangs, the gang's reputation and activities reflect on its individual members. For example, if the leadership starts a war that creates new enemies, each member of the gang now has a new enemy, whether he wants one or not. Limiting these costs—direct predation and the negative externality of bad decisions by superiors—requires overcoming a collective action problem.

The potential for predation leads to two problems for the criminal organization. First, given that potential entrants have imperfect information about the costs and benefits of membership, how does NF ensure his protection before joining the organization? The original NF constitution grants the *Nuestro General* "supreme authority," membership is for life, and members must work for the gang even once released. Since exit is not an option, the potential for predation is especially strong.<sup>10</sup> Second, how does the organization control internal predation? If NF gets a reputation of predateding its own members, the expected benefit of membership will decline, making it more difficult to recruit people. Current members will also expend resources to protect themselves from internal predation instead of engaging in business. The *Nuestro General*, Captain, and Lieutenant can each gain individually by predateding on underlings because the costs are borne by all members of the organization. For the gang to be successful, it must overcome the collective action problem of limiting predation.

### 3.2. A Simple Model of Predation

Consider a sequential game of complete and perfect information (Figure 2) between an inmate who will potentially join the gang (Player 1) and a member with authority over other members (Player 2). Player 1 ranks payoffs as  $\alpha > \beta > \gamma > \delta$ ; Player 2 ranks payoffs as  $\eta > \theta > \kappa > \lambda$ .

Initially, Player 1 and 2 each have two options. Player 1 can either join or not join the gang.<sup>11</sup> Player 2 can either predate or not predate on Player 1.<sup>12</sup> Player 1 chooses first (at node indicated  $P_1$ ) and Player 2 chooses second (at nodes indicated  $P_2$ ).

If Player 1 decides not to join NF, he is reliant on himself for protection and he is not bound to obey the gang. If Player 2 chooses not to predate him, Player

10. The NF constitution indicates that members might be "discharged" from the organization. This results either when a member is declared a traitor or upon semi-retirement, when a member who is fifty years old and has been in the organization for twenty years can choose to be assigned only to legal activities.

11. The model does assume that people can voluntarily choose – no one is forced to join the gang. While it is possible that prison gangs could attempt to force people to join, there is no evidence to suggest they actually do. In fact, the elaborate schooling and testing process prior to initiation suggests that NF is selective in choosing its membership. If, however, an individual was forced to join the gang and the internal governance rules applied to him, the governance institutions would still protect the individual from internal predation to the same extent that it protects willing participants.

12. For simplicity, I assume that all predation attempts are successful.

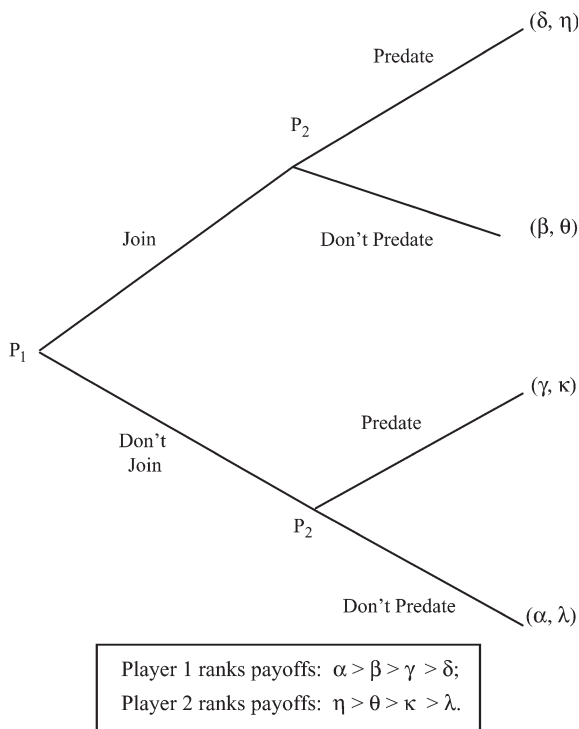


Figure 2. The Predation Problem.

1's payoff is  $\alpha$ . If, on the other hand, Player 2 does decide to predate on him by acts of theft, rape, abuse, etc., Player 1 receives a payoff of  $\gamma$ , with  $\gamma < \alpha$ . In either case, Player 1 faces only direct predation and does not bear the costs of the organization's decisions more broadly.

When Player 1 joins NF and is not predated, he enjoys the benefits of protection from other gangs as well as assistance in operating criminal enterprises inside and outside of prison. For this, he receives a payoff of  $\beta$ .<sup>13</sup>

There are potential costs to joining the gang though. Obedience to superiors inside the prison and the potential for predation by them are the most apparent. Other costs include the responsibilities of members once paroled. Parolees must pay a "gang tax" of 25% of their earnings for the rest of their lives to higher-ranking members inside and outside of prison (California Department of Justice. 2004: 9).<sup>14</sup> Members are subject to the gang's direction; they

13. Perhaps because their legal opportunities are preferred to criminal ones, for some inmates joining the gang will always be less preferred than not joining, as evidenced by the many inmates who do not join gangs. This analysis focuses on those inmates who do value gang membership conditionally.

14. The 25% tax is not predation because members know about it and agree to it before joining the gang.

cannot continue their criminal activities autonomously. A United States District Court reports that one particular NF murder was motivated because a member "... was classed as a "dropout" for refusing to carry out his gang responsibilities while imprisoned at Deuel Vocational Institute" and so "was on the gang's hit list" (Vasquez v. McGrath). Failure to engage actively in criminal enterprise once released is punishable by death (Lynem 1999). Life-time commitment to NF comes at a significant cost. Given these costs, Player 1 especially dislikes predation once a member, so this yields a payoff to Player 1 of  $\delta$ , with  $\delta < \gamma$ .

Player 2 benefits from an additional soldier in the organization, which yields a payoff of  $\theta$ . However, Player 2 can gain additional benefits from predated Player 1 once he has joined. The payoff from predated a member is  $\eta$ , with  $\eta > \theta$ . If Player 1 chooses not to join, then Player 2 can still choose to either Predate or Not Predate. By predated, Player 2 can earn some amount, a payoff of  $\kappa$ . This is less valued than  $\theta$  because Player 1's wealth is limited to what he alone can earn without the organization's assistance.<sup>15</sup> The payoff to Player 2 if he does not predate is  $\lambda$ .

The result is that for Player 2, predation is strictly dominant. Given this, Player 1 will choose not to join because  $\gamma$  is greater than  $\delta$ . The subgame perfect Nash equilibrium is (Don't Join, Predate) with a social payoff of  $(\gamma + \kappa)$ . Mutually beneficial exchanges do not take place.<sup>16</sup> If the NF organization could credibly commit not to predate on the potential entrant once he joins, then Player 1 would choose to Join. When Player 2 credibly commits and does not predate, Player 1 receives  $\beta$ , which is greater than  $\gamma$  and Player 2 receives  $\theta$ , which is greater than  $\kappa$ . All players are better off.

### 3.3. Constitutional Constraint on Predation

The NF constitution is an attempt to commit credibly to the protection of its members. However, the fact that a constitution is in place does not make it binding. Due to the problems Sutter (1997) identifies, collective action problems arise among the current leaders. Each NF leader has an incentive to predate on members even though they would all be better off if no one did. Internal predation makes recruiting new members more difficult and encourages members to invest resources in preventing predation rather than engaging in their criminal enterprise. How can the *Nuestro General* ensure that Captains and Lieutenants do not predate on members? The constitution creates multi-level internal governance institutions that limit predation by enabling members to monitor for predation, an incentive to stop it, and a mechanism for doing so. The result is that Player 1 can now act subsequent to Player 2's move. The NF

15. There are two reasons why gang members would choose to predate on their own membership. First, gang members will generally have more resources to extract. Second, nongang member inmates are often customers of the gang's businesses.

16. Society as a whole may be better off if these individuals did not cooperate, but this model considers only the welfare of these particular inmates. See Buchanan (1999) for an argument in defense of organized crime.

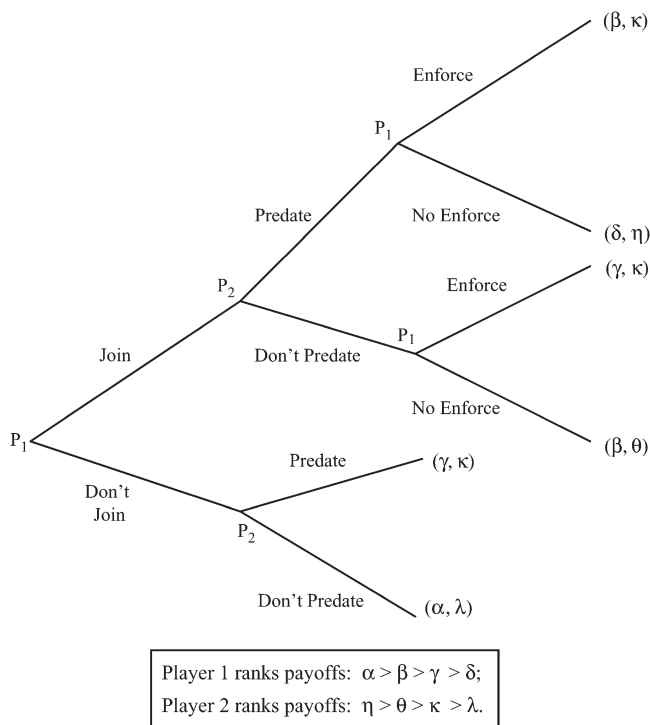


Figure 3. Constitutional Constraints on the Predation Problem.

constitution has empowered him to resist predation by giving him a mechanism for communicating abuse to superiors. Player 1 can now “enforce” the constitution and stop predation or not (see Figure 3).<sup>17</sup> Given the mechanisms explicitly outlined in the constitution (see below), “enforce” is the dominant strategy for Player 1 when Player 2 predate. Because Player 2 knows Player 1 will enforce the constitution, Player 2 will not predate and Player 1 will join. When Player 1 had no ability to stop predation, the social payoff was  $(\gamma + \kappa)$ . With the constitution in place, however, the equilibrium will be (Join, Don’t Predate, Don’t Enforce) and the social payoff will be  $(\beta + \theta)$ . All parties are better off than if Player 1 had chosen not to join.

#### 4. A Constitution for the Incarcerated

##### 4.1. Overview

How does the constitution provide checks and balances to ensure that Player 1 can effectively enforce the constitution when Player 2 predate? Enforcing constitutional constraint becomes difficult because of the collective action

17. I assume that information costs are low enough to identify who is actually in the organization and thus subject to the constitution. Player 1 cannot enforce the constitution if he is not a member of the gang.

problems that arise from the hierarchical governance structure. There are several advantages to a hierarchical system. The most important advantage is that it avoids the costs of obtaining information about all activities occurring in the different prisons. Information about members (skills, attitude, dependability, etc.), correctional officers (hard-nosed, lax, weaknesses in particular facility operations, etc.), the inmate consumer population (preferences for drugs, prostitution, etc.), and other gangs (power, market control, belligerence, etc.) are all more easily obtained by individuals within that particular prison.

Communication is costly since correctional officials are continually attempting to intercept communication between gang members. NF use of the Aztec language, "micro writing" of letters less than a quarter of an inch, codes and ciphers, messages hidden in artwork, and relaying lengthy messages via paroled members are several costly methods resorted to. Citing an Associated Press article, Fuentes notes that some resourceful inmates "are taught to write coded messages with their own urine on the backs of innocent-looking letters or drawings before mailing them to outsiders. When the urine dries, the contents of the message remain invisible to the naked eye until the recipient holds the paper to heat and its secrets are revealed" (Fuentes 2006: 93). Vesting decision-making authority with individual Captains allows the organization to obviate high communication costs.

An alternative organizational structure would be rule by consensus rather than giving supreme authority to the General. Several reasons suggest this is less effective. First, coordinating activity across different prison facilities would be prohibitively expensive if there was to be total (or even partial) group consensus on all decisions. As the number of people it takes to reach agreement rises, the costs of decision will rise as well (Buchanan and Tullock 1999: 71). Grann (2004) quotes a member of the Aryan Brotherhood prison gang on the importance of decision-making costs:

We used to be one man one vote, included damn near everything. I mean, damn near everything. Somebody getting in, whacking somebody . . . You damn near had to have the whole state's okay . . . You had to send some kites [notes] and runners and lawyers and this and that. It always got tipped off by the time we got back to you and said, 'Yeah, dump the guy.' . . . You can't have someone in the yard that you want to bump [kill] and let them be out there for two or three weeks."

Giving power to leaders reduces these decision-making costs.

Second, decisiveness and unquestioning obedience by subordinates is crucial in times of war. If someone becomes a "weak link" during an attack because of confusion about who is in authority or whether the attack was authorized by the requisite parties, the initiative may be undermined and all members endangered. In this case, the clearly defined prerogative to command and coerce members is an important input into the gang's operation.

Of course, a hierarchical structure has weaknesses too. Principle-agent problems are present because of the autonomy of regiments and the costly nature of

communication between prisons. The General may not know what a Captain is doing in another prison. Is the Captain embezzling funds, making foolish overtures to rival gangs, or snitching to correctional officials?

The NF constitution creates a system of checks and balances to protect against predation (see Figure 4). Predation mainly can occur against lower ranking members; for example, the General could predate on Captains or Captains on Lieutenants or Soldiers. The General, however, can also be predated through illegitimate deposition. As predation increases, the profitability of the operation as a whole declines. Potential members are less likely to join for lack of a credible commitment for their safety. Members spend resources protecting themselves against predation from within rather than earning in their criminal enterprises.

The governance structure adopted provides several mechanisms for NF leaders to reduce the costs associated with the problems of constitutional constraint that Sutter identifies.<sup>18</sup> First, the constitution vests mechanisms for monitoring with those members who have the lowest costs of monitoring. For example, a Soldier can observe the activities of a Captain more easily than other Captains can because they are in the same correctional facility. Soldiers have specific knowledge about the time and place of superiors' actions that are not available to other Captains or the General.

Second, members have an incentive to communicate information about predation to superiors; this overcomes the free rider problem. If a Soldier is treated inappropriately, appealing to a higher ranked member can improve his situation. More broadly, aligning incentives between the General and lower ranked members discourages predation by Captains and Lieutenants. For example, the General wants his organization to be prepared in the case of war; Soldiers, too, want personal safety if war is declared. By requiring the Lieutenants to provide weapons to each Soldier, the Soldiers and General's incentives are now aligned. If the Soldier does not receive his weapons, he has both the information and incentive to communicate this information to superiors.

Third, information and incentives are useless if members do not have mechanisms for reporting predation. The constitution creates several mechanisms—voting and appeals processes—designed for this purpose. By aligning incentives to monitor predation with the lowest-cost observers and providing mechanisms for communicating this information to the individuals in charge, NF can credibly commit not to predate on its members.

#### 4.2. Nuestro General

Originally, the governance structure had four ranks outlined in the constitution: the Nuestro General, Captains, Lieutenants, and Soldiers (see Figure 1). The Nuestro General is “the supreme power in the organization . . . his powers

18. The NF constitution does not appear to address Sutter's second problem of enforcing constitutional constraint: ensuring the sincerity of constitutional interpretation by experts. It is unclear if this is because the constitution is clear enough to obtain agreement on its meaning, if this role is facilitated in some unknown way, or if this concern is not applicable in this setting.

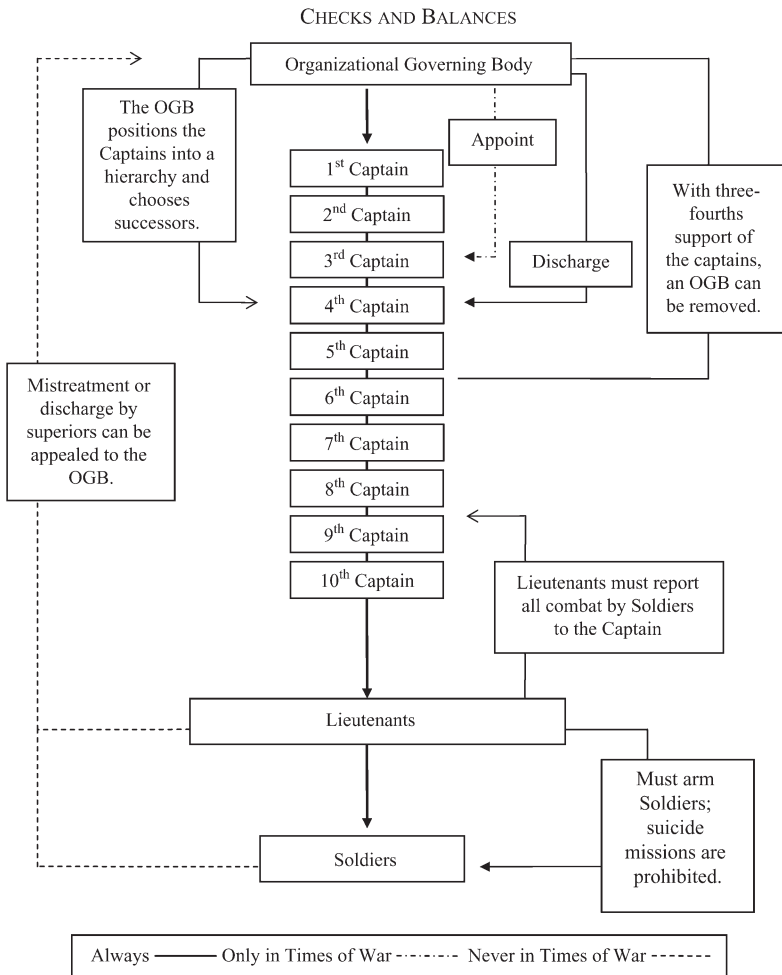


Figure 4. Checks and Balances.

shall have no limit” (Art. 1, §1).<sup>19</sup> He has the authority to command any member, determine the enterprise’s strategy, and declare war on other prison gangs or against correctional officers. A Salinas Police interview with an NF member corroborates this role, reporting that, “Ramirez [a paroled NF member] stated that the new order contains a general on the inside who runs everything within the prison system . . .” (NuestraFamiliaOurFamily.org: 2). The Nuestro General remains in power until he is within 1 year of completing his prison sentence (Art. 1, Sec. 2) or becomes physically incapable of completing his responsibilities, at which time the chosen successor takes control.

19. Citations to article and section numbers correspond to the gang’s written constitution.



How can gang members restrain the power of the General? Nominally, the General has “supreme power,” but his ability to predate is actually limited in several ways. First, the General is constrained in times of peace. The General can appoint and discharge Captains at his discretion in times of war, but during times of peace, he can only discharge them. At that point, the regiment under the previous Captain’s control will elect a new Captain to represent their interests and monitor the General.

The General has an incentive to limit wars, for these are times of reduced profitability. When prison gangs attack each other, correctional facilities will lock down entire cellblocks, leading to foregone sales opportunities. One Aryan Brotherhood member confirms that wars translate into lower profits: “We weren’t looking to have wars . . . it would slow business down” (Gangland 2007). Prison wars are costly: gang members may be injured, placed into isolated cells where they cannot conduct business, and resources must be used to protect against rival gang attacks. As profits diminish, the General’s coffers do too.

The second way the General is constrained is by impeachment. The General may be impeached from office by signatures from all of the Captains (Art. 1A, Sec. 1). He loses all power immediately upon receipt of the document. He may challenge the legality of the signatures, in which case a Soldier will be assigned to verify the Captains’ votes (Art. 1A, Sec. 2). Once the General is impeached, the first-ranked Captain will succeed the General. The first-ranked Captain has an incentive to monitor predation by the General and a mechanism for stopping predation when all 10 captains find it onerous.

How does the General know he will be safe from unauthorized deposition? Historically, dictators and kings have faced the threat of coups by self-seeking successors; the General faces this problem as well.<sup>20</sup> Several checks and balances protect against this. First, if the General feels a Captain is not following the constitution or is a threat to him, he can discharge the Captain. Discharging a Captain does not ensure that someone more compliant will be elected, however, because the Captains are elected by the regimental membership body. Second, if the General is injured or killed, war is declared immediately. This raises the cost of overthrowing the General because if the coup fails he can appoint Captains at will during times of war rather than having to accept whomever the members elect. Third, the Captain responsible for protecting the General “will have no power to appoint or replace any or all positions in the high command” (Art. 1, Sec. 3a), and he will be stripped of all rank after the war is over (Art. 3, Sec. 12). The Captain charged with protecting the General has the incentive to do so. Finally, the General chooses who among the Captains will be his successor. The successor must be a “seasoned experienced warrior” (Art. 1, Sec. 3). This creates an incentive for the chosen successor to monitor the other Captains. Because he is next in line to be the General, he has an incentive to ensure that depositions are orderly. In the event of a coup, he may not receive his rightful position.

20. See Tullock (2005), for an extensive discussion of the incentives facing dictators, especially pages 48–81.

Despite the restraints on the General’s power, the NF membership eventually found it insufficient. By 1978, 13 years after its inception, NF had accumulated tens of thousands of dollars of illegal revenue. Robert Sosa, the *Nuestro General*, controlled the organization’s reserves, which gave financial assistance to parolees and provided comfort items like TVs to reincarcerated members. Members discovered that Sosa was responsible for embezzling over \$100,000 from the organization’s bank. He denied “any wrong doing and refused to relinquish any financial records. Believing that something should be done, NF members charged Sosa with misappropriating NF funds and impeached him” (Fuentes 2006: 28). Sosa refused to step down, so NF members “hit him” (Fuentes 2006: 28). This was considered acceptable enforcement of constitutional abuses. Surprisingly, Sosa survived the attack, but he was no longer a member of NF, and he remained on the gang’s hit list.

More cautious of giving control to a single person, the NF membership redefined the highest rank as the “Organizational Governing Body” (OGB), a three-member board (Fuentes 2006: 29). The three members were “voted into their leadership positions, receiving equal yet limited authority” (Fuentes 2006: 29). Members of the OGB had the same authority that the General did, but all decisions had to receive two-thirds support. Members of the OGB could be voted out by agreement of three-fourths of the Captains. The revised constitution stated that the OGB should “respectfully guide the directives and honor the will of the people.”<sup>21</sup>

#### 4.3. Captains

Captains monitor the OGB but they also have power to coerce Lieutenants and Soldiers. It is the Captain’s duty to command them in pursuit of the organization’s objectives. Selling drugs, extortion, and prostitution are common activities. The Captain is also in charge of determining discipline for all minor infractions within his regiment (Art. 6, Sec. 1). The NF organization can have up to 10 Captains (also known as Commanders or *Capitáns*) at a time (Federal Bureau of Investigation 2008: 7).

How are Captains constrained in using this power to the detriment of the organization? Several mechanisms accomplish this. First, the OGB ranks the Captains “according to their leadership ability and overall foresight” (Art. 1, Sec. 7). According to the Federal Bureau of Investigation, rank is obtained by “making good ‘hits’ [murders] on ‘hermits’ [enemies of NF]” (2008: 7). Members elected to the OGB “must have already made the ultimate sacrifice [murder] for the O [organization] and can have no less than ten (10) years of loyal membership” (Fuentes 2006: 30), so the potential for promotion motivates Captains to constrain their predation.

21. When the original constitution was amended to replace the *Nuestro General* with the OGB, the titles of the other ranks were changed as well. Categories I, II, and III replaced soldiers, lieutenants, and captains. Because the change was semantic, I will continue to use the original rank titles for clarity.

Unlike the OGB, the Captain appoints Lieutenants to be under his charge. There is no requirement on the number of Lieutenants to be under a Captain, and he is free to dismiss them at will. This freedom enables Captains to order Lieutenants to engage in activities that are costly for the organization. This power is constrained in three ways. First, during times of peace discharged Lieutenants can petition the OGB to complain about unfair demotion (Art. 3, Sec. 2). The OGB is required to send no less than three soldiers to investigate the matter. They can discipline the Captain or reinstate the Lieutenants if desired. Second, if a Lieutenant is disciplined by a Captain unfairly he can appeal to the OGB (Art. 6, Sec. 1), although not in times of war. Third, Captains are always answerable to the OGB (Art. 3, Sec. 10). If there are a sufficient number of complaints about a Captain, the OGB can discharge him and the members of the regiment will elect a new one.

Following these constitutional constraints appears to be common among the membership. For example, in 1993 a conflict arose between two captains. Arthur "Big Smiley" Ramirez asserted authority over prerogatives held by Pablo "Pantera" Pena. Pena "filed a complaint to the Regimental Security Department (RSD) officer, Gerald "Cuete" Rubalcaba, . . . about Big Smiley's unauthorized attempt to take over the high command of D-facility" (Fuentes 2006: 118). Rubalcaba obtained information about misconduct because the person being challenged, Pena, had both the incentive to and a mechanism for reporting it. Rather than costly physical infighting to resolve the dispute, the internal mechanisms outlined in the constitution were relied upon.

In another instance, Ramirez was investigated for recruiting members without authorization (Fuentes 2006: 168). Pena, aware of Ramirez's constitutional violations stated that "We've impeached other familianos in the past . . . and we will do it again." He felt it would be a "serious mistake" to allow any member to act as if he were a "dictator" (Fuentes 2006: 166). Pena "as a familiano, was long since wedded to participatory democracy in substance as well as in form" (Fuentes 2006: 167). As punishment for breaking the rules, Ramirez was demoted to the rank of Soldier, where he held no leadership authority (Fuentes 2006: 174).

In addition to corroborating the conflict and resolution between Pena and Ramirez, transcripts from an FBI interview with Robert Gratton (at one time the third highest ranking member of NF) confirms that problems reported to superiors in this situation are "investigated and those who are found in violation of NF rules [are] 'held accountable'" (Fuentes 2006: 238).

In general, evidence suggests that captains followed the constitution. For example, the constitution states that the highest ranking captain in a correctional facility is in charge of the gang regiment, and although this may entail one captain having less authority when a higher ranked captain arrives in his prison, it appears that this protocol was followed. In one case, a higher ranking paroled member took leadership of a regiment, which entailed the peaceful demotion of the current leader to the role of advisor (Fuentes 2006: 122). In another case, "... although Gratton was the higher-ranking member, he knew his stay in Deuel was temporary and decided to function as a regimental

advisor instead of taking the reigns of power" (Fuentes 2006: 135). One captain was demoted for not enforcing discipline in his regiment strictly enough, being replaced by a captain who would (Reynolds 2008). Another incident involved a captain being demoted for not murdering an enemy of the organization (Fuentes 2006: 191). They transferred power peacefully, following the dictates of the constitution, and avoided costly warring within the group.

This evidence should be viewed with caution, as it does not indicate the frequency that individuals followed the constitution. These may be the few rare occurrences where the constitution was followed. However, given the importance of the constitution as outlined in private correspondence between members (Fuentes 2006: 176, 186) the existence of these examples, and the authenticity granted by the FBI to its importance, it is likely that the constitution is followed to a significant extent.

#### 4.4. Lieutenants and Soldiers

The Lieutenant's job is to be the representative of the organization and work directly with Soldiers. The Lieutenants are ranked based on their Captain's estimation of their experience and leadership ability (Art. 4, Sec. 4). The Lieutenant's operational duties include keeping in touch with all members of the regiment, and at all times setting a good example for the Soldiers to follow (Art. 4, Sec. 1). He is responsible for Soldiers' "schooling and basic needs and conduct" (Art. 4, Sec. 3):

All recruits must master the rules, which are taught in an atmosphere a high-school teacher might envy. "They drilled us eight hours a day," says Art Serrato, another apostate. "It was brainwashing." The classes are divided between academic discussions of drug rings, armed robberies and the gang's constitution, and workshops, where lieutenants teach how to make bombs from matches, knives from cologne bottles and zip guns from toothpaste tubes (Sandza and Shannon 1982).

In addition, Lieutenants administer discipline as directed by the regiment's Captain (Art. 6, Sec. 2).

Lieutenants also keep records, known as the Bad News List, of all enemies of NF, and they check the prisoner transfer list daily to see if any of these enemies have entered the facility (Art. 4, Sec. 5). If so, they will arrange for the inmate's murder. Court transcripts indicate, "Every lieutenant in Nuestra Familia was responsible for 'see(ing) to it that something was done about the people on the list.' The higher-ups schooled their subordinates as to the identity of the gang's enemies and a lieutenant could, on his own initiative, order his soldiers to execute a known enemy of the Nuestra Familia" (People v. Garnica, 175 Cal. Rptr. 521, 522–23 [5th Dist. Ct. App. 1981]). Lieutenants also talk with all new NF members to find out about unknown enemies of Nuestra Familia (Art. 4, Sec. 5a).

Given his role of managing soldiers and his discretion to murder, what prevents the Lieutenants from preying on their own soldiers? Reminiscent of the

United States Constitution's 2nd Amendment, one of the Lieutenant's duties is to ensure that every Soldier is armed (Art. 4, Sec. 2). This ensures that each member has a degree of personal safety from both predating lieutenants and other inmates. If in peacetime a member "feels that the power or powers of the structure in his regiment is mis-using their appointed authority against him ..." they can appeal to the OGB to investigate the matter (Art. 3, Sec. 10). Soldiers can check the power of Lieutenants and Captains by appeal to the OGB. When a Soldier goes into combat, the Lieutenant has to report it to the Captain (Art. 4, Sec. 3a). As a result, a Lieutenant cannot use soldiers for purposes outside of NF goals. These mechanisms provide greater safety to soldiers.

The constitution also improves the collective pursuit of criminal profits by raising the costs of alternative, nongang activities, and prohibiting behavior that negatively affect other members. No material things, "whether it be drugs, money, women" can be placed before the best interest of the organization (Art. 6, Sec. 5). Fighting other members is forbidden "... and if blood is spilled, it will result in the expulsion of one or all parties involved" (Art. 6, Sec. 4). Because communication is costly and the leaders have significant authority to coerce, members are prohibited from lying to each other about their position or gang business (Art. 6, Sec. 5a). NF requires an "automatic death sentence ... on familianos that turns coward, traitor or deserter" (Art. 2, Sec. 5). This increases the relative cost of engaging in crimes independently, giving up the life of crime, or shirking on one's NF responsibilities, thus strengthening the organizations criminal exploits.

## 5. Conclusion

Despite being a murderous prison gang, NF has taken active and rational steps toward promoting effective internal governance institutions. This article has shown how predation within the organization is limited through a system of checks and balances. As constructed, the internal governance institutions enable each member with the ability to monitor predation, an incentive to stop it, and a mechanism for doing so.

Extensive norms of social and professional interaction are central to prison gangs and organized crime more generally. The recent arrest of a Sicilian Mafia crime boss revealed that the organization has a "Ten Commandments" that dictates acceptable behavior and norms that all members are required to follow (Lubrano 2007). Polish prisoners in the 1980's developed extensive unwritten rules about appropriate behavior in order to overcome problems arising from the scarcity of physical space and breathing room (Kaminski 2004).

NF's system of checks and balances allows it to overcome the problem of predation given their hierarchical governance structure. Other organized crime enterprises, however, face different constraints that determine different governance institutions that engender different predation problems. The potential for predation permeates criminal activity but are especially problematic when

organizations are characterized by the inability for members to exit. Solving this fundamental problem of organized crime is crucial to the successful organization of criminal enterprise.

For example, Leeson (2007a) examines internal predation and governance between two groups—predating pirate captains and pirate sailors faced with a coordination problem to enforce restraint. This two-tier organizational structure is efficient because information costs about members' activity are low given the relatively small number of pirates and the circumscribed space on a ship (Leeson 2007a: 1057). The benefits from reducing information costs by delegating authority were apparently less than the costs of ambiguity of leadership in times of battle. Because of this organizational structure, a coordination problem arose among the potential victims who were able to identify predation when it occurred but could not coordinate enforcement.

To solve the coordination problem, sailors employed a quartermaster to monitor the captain and coordinate constitutional enforcement. Both the captain and quartermaster were elected by majority vote and all pirates agreed to the ship's rules before setting sail. In times of battle, the captain had full authority on the ship, but at other times, the quartermaster was responsible for handing out rations and resolving disputes—an effective check on the captain's power to predate (Leeson 2007a: 1064–76).

Both NF and 18th century pirates faced the problem of internal predation, but the predation problem took different forms. Limiting predation within prisons was a collective action problem of overcoming agency problems and high communication costs, while the pirates were faced with a coordination problem. Both deployed constitutions, though with different rules, to construct mechanisms for solving these problems within the governance institutions.

The methodical nature of the NF constitution may seem surprising at first. It should be recognized, however, that criminal enterprises face many of the same problems that governments do, so it is not unexpected that similar solutions are developed with adequate alteration for the uniqueness of the environment. The mental capabilities of criminals, especially prison inmates, also should not be underestimated. Writing about his own experience as an inmate in a Polish prison, the political scientist Kaminski (2004) writes that:

Prison socializes an inmate to behave hyperrationally. It teaches him patience in planning and pursuing his goals, punishes him severely for his mistakes, and rewards him generously for smart action . . . . There is little space for innocent and spontaneous expressions of emotion when they collide with fundamental interests . . . . Paradoxically, much of the confusion in interpreting prison behavior arises from both a failure to understand the motives of inmates and an unwillingness to admit that outcomes judged as inhuman or bizarre may be consequences of individually rational action (2004: 1).

There may be no honor among thieves but by carefully designing their internal governance institutions, criminal organizations can create order.

## Appendix: The Supreme Power Structure of NF<sup>22</sup>

### Article 1: Supreme Commander

Section I. The Nuestro General (NG) is the supreme power in the organization known as La Nuestra Familia. His power shall have no limit (within Art. I, II, III). Solely he can declare war for the entire O and once in a state of war, peace shall not prevail until the announcement from the NG.

Section II. NG will be automatically released from any duties and responsibilities upon receiving a date of one year or less.

Section III. NG will be a seasoned experienced warrior. This qualification is mandatory in order to hold this high office. When the time comes for the NG to pick a successor, he will do so from the ranks of commanders at his disposal.

Section III(a). In case of emergency and the NG is downed, the captain at the *pinta* will take over and automatically declare war until the first captain can automatically assume the rank of NG. In this emergency, the home captain will have no power to appoint or replace any or all positions in the high command of La Nuestra Familia.

Section IV. NG has the power, in the state of war conditions (as regards to structure), to appoint captains. In peace time, he will retain the power to discharge any commander that is negligent in the functions of his position; however, he will relinquish his power to appoint captains if the *familia* where the captain has been discharged has no reserve captain to take command. The *familia* body of said disposed captain will elect a successor.

Section IV(a). A discharged commander will lose his rank of captain and said authority of that rank.

Section V. Only applies in time of peace [*sic*].

Section V(a). NG, upon receiving a complaint from one of his *soldados* that the authority of which he is under is unjustly using their power over him due to personal conflict, he (NG) will appoint a committee of no less than three *soldados* from that particular clan to investigate said charges, and each is to report to the NG.

Section VI. NG will always keep in touch with all familianos leaving to the streets, until a branch in union of La Nuestra Familia is established.

Section VII. NG can have as many as ten (10) active commanders at one time. He will grade them as 1st, 2nd, 3rd, and so on according to their leadership abilities and their overall foresight.

Section VIII. NG will appoint a first captain or commander who will be his successor, and if the NG becomes incommunicado, the first captain of the NF will have the responsibility to see that every captain of said O works and governs within this constitution.

Section IX. The successor only applies as far as the first captain is concerned. The NG has the right to select the first captain.

22. This reprint of the original constitution is found in Fuentes (2006: 3–11).



### Article I(a). Discharge of All Duties from NG.

Section I. NG may be impeached from office where it is the opinion of all commanders holding office at that time that he is not working in the best interest of the organization. This can be derived from a petition or document with signatures in each captain's own writing.

Section II. Upon receiving the document, the NG will automatically lose all power, but he may challenge the legality of the signatures, in which case a *soldado* will be appointed by the body to write to the captains and verify their votes.

Section III. Upon confirmation of a discharge of the NG, he will lose all rank and power, and the successor will move into that position.

### Article II. Objectives and Bylaws of NF

Section I. The primary purpose and goals of this O is for the betterment of its members and the building up of this O on the outside into a strong and self-supporting *familia*.

Section II. All members will work solely for this objective and will put all personal goals and feelings aside until said fulfillment is accomplished.

Section III. A *familiano* will not be released from his obligation toward the O because he is released from prison but will work twice as hard to see that a *familia* is established and works in hand with the O already established behind the walls (*pinta*).

Section IV. A *familiano* will remain a member until death or otherwise discharged from the O. He will always be subject to put the best interest of the O first and always above everything else, in prison or out.

Section V. An automatic death sentence will be put on a *familiano* that turns coward, traitor, or deserter. Under no other circumstances will a brother *familiano* be responsible for spilling the blood of another *familiano*. To do so will be considered an act of treason.

Section VI. In order for (Art. II, Sec. V) to be invoked, the regimental governing body will hold a vote among themselves and pass sentence. Majority rules. In the case of a tie vote, the decision will lie with the captain, and his decision shall be final.

Section VII. All present *familianos* in said O La Nuestra Familia acknowledge said constitution upon reading it and will be held accountable for his actions if said constitution is not followed.

### Article III. Regimental Captains

Section I. A captain is the regimental commander of La Nuestra Familia and holds the rank just below el NG. Their responsibilities are to lead and direct La Familia regiments under his care to successfully accomplish the goals set forth in (Art. I, Sec. V).



Section II. For this purpose, he (captain) shall have the choice of selecting his own lieutenants (*tenientes*) and shall have the power to dismiss the lieutenant if he (captain) feels that they are not accepting or handling their responsibilities of leadership. In times of peace, a dismissed lieutenant has the option to invoke (Art. I, Sec. V).

Section III. Due to circumstances beyond our control, it may be that there will be more than one captain in a regiment at the same time. If a captain is transferred from a *familia* regiment to another where there is already a captain, the captain with the highest rank will take command, and the others will be in reserve according to their ranks.

Section IV(a). A captain will have a grade rating of 1st, 2nd, 3rd and so forth, as (Art. III, Sec. III) can be invoked. Also, the lower the numbered rating, the greater their authority. No captain can override or contradict the orders of a higher ranking commander without direction of NF's NG.

Section IV(b). All other captains in a regiment other than the governing captain will be classified as reserves and will act as advisors, although they will not have any powers as to the running of the regiment.

Section V. There shall never be more than ten (10) captains in the O at any time. This includes reserves. If there are already ten captains in the O and a regiment is without a captain or commander due to (Art. III, Sec. III), the 1st lieutenant will run the *familia* (regiment) temporarily until a commander arrives or there is an opening in the ranks of captain.

Section VI. The reserve captains will only take power if the governing one is downed or discharged by the NG. It will be the duty of the governing commander to take and show him the internal functions of the regiment in order that the reserve captain will be qualified to govern the regiment if need arrives.

Section VII. All captains will hold equal rank and therefore one cannot order the other, except under (Art. III, Sec. III), or where the reserve captain is hindering the rules and orders that the governing captain has set forth efficiently running the *familia* (regiment). In that case, the reserve captain will cease to interfere or he will be brought before the NG.

Section VIII. The reserve captain only has as much power as the governing commander wants bestowed on him and not more. The *familia* body should at all times know the structure of the reserve captain.

Section IX. In time of war, the captain is only answerable to the NG and no *soldado* shall question the orders set forth by him personally or one of his *tenientes*. To question said orders could be a treasonable act, as outlined in (Art. I, II, Sec. V), depending on the seriousness of the offense, which will lie with the captain to determine.

Section X. In time of peace, as in time of war, a captain is answerable to the NG; however, in time of peace, if a *familianos soldado* feels that the power or powers of the structure in the regiment is misusing their appointed authority against him due to conflicting personalities, he has a right as an honorable member of this O to appeal to the supreme commander NG, as per (Art. I, Sec. V).

Section XI. The commander shall be responsible for the welfare and lives of the *soldados* under his command at all times, and there shall be no suicidal missions ordered by a commander. A suicidal mission shall be translated as an act where the *soldado* has no chance of survival.

Section XII. Home captain where NG has his headquarters shall be held responsible if anything should happen to the NG. It will be the duty of the captain to personally see that two of his best warriors be with the NG whenever possible. If the NG is downed, the captain will be stripped of all rank after the state of war is over (Art. I, Sec. IIIa).

#### Article IV. Functions and Qualities of a Lieutenant

Section I. A lieutenant is third in the power ladder of La Nuestra Familia, he is under the captain. He is the representative of La Nuestra Familia, as he will be in contact with familianos at all times and, therefore, he should at all times set a good example for the *soldados* to follow.

Section II (a). While in a state of war, and the arms quota drops below the specified requirement, it shall be first priority of the lieutenant to restore to restore to par as outlined in (Art. V, Sec. II) [*sic*].

Section III. Each lieutenant shall have a certain number of *soldados* assigned to him. He shall be responsible for their schooling and basic needs and conduct.

Section III(a). Whenever one or all his *soldados* goes into combat with any of the enemies of La Nuestra Familia, he (lieutenant) shall present the captain with a full report of what occurred.

Section IV. The lieutenants shall have ratings of 1st, 2nd, and 3rd. This rating shall be given to them by the captain according to their experience and leadership abilities.

Section V. It shall be the duties of the lieutenants to keep a record of all known names and numbers of La Nuestra Familia. Each day, he shall check all new arrivals who entered his territory against his record book and make a report to his captain.

Section V(a). All lieutenants shall question all new familianos assigned to him for information as to unknown enemies of La Nuestra Familia. New information shall go into the record book, and whenever one of his *soldados* is transferred to another *pinta*, a copy of the record book shall be sent with the *soldado*.

Section V(b). It shall be the responsibility of the lieutenant to inform the captain of the departure of his *soldados* in order that the *familia* of the other regiment can be informed.

#### Article V. Familiano Soldado

Section I. All requests for membership into this O shall be made to the captain. Any member can make such a request for any individual providing such requesting *familiano* is will to accept full responsibility for said individual.

Section II. Final decision for membership shall not be made until 30 days have elapsed from such a request, and the governing body of the regiment must approve the request for any new membership.

Section III. No applicant will be considered for membership if he (applicant) misrepresents his qualifications. Also, once a member and *soldado* misrepresents his actions in battle for the benefit of making his actions seem more valourous, he will be subject to be disqualified under (Art. II, Sec. Vb), a minor offense, or (Art. I, Sec. V), expelled from the O, depending upon the circumstances and seriousness of the lie.

Section IV. Membership of this O shall be restricted only to those of Latin extraction. No maximum or minimum shall be invoked by this constitution in so far as membership in this O is concerned; however, such limitations may be established by NG as to be necessary to maintain proper control, although others of other extractions (races) will be considered with the consent of both the captain and the NG.

## Article VI. Discipline and Conduct

Section I. The regimental captains shall pass sentence for all minor infractions of conduct. In time of war, there will be no appeal to NG.

Section II. Punishment shall be administered by the regimental lieutenant (Art. IV, Sec. III) or by the regiment as a whole, when ordered by the *familia* commander.

Section III. All *familianos* shall be subject to disciplinary action or immediate expulsion from this O (Art. II, Sec. V). In the case of misconduct or behavior unbecoming of a member, said conditions shall prevail with regards to the individual toward another member, the O as a whole, or his superiors.

Section IV. Under no conditions will there be fighting between *familianos*. To do so will bring on disciplinary action and if blood is spilled, it will result in the expulsion of one or all parties involved (Art II, Sec. V).

Section V. No member of this O shall put material things, whether it be drugs, money, women, or punks (as related to the *pinta*) before the best interest of La Nuestra Familia or a *familianos*.

Section V(a). No *familiano* shall lie about his position in La Nuestra Familia nor when discussing *familianos* business to a superior or a brother member. There shall be no lying or giving false impressions.

Section VI. It is the sacred duty of a *familianos guerrero* to do battle for La Nuestra Familia, and no *soldado* should feel that because he fought for his O that he is entitled to special privileges. All that matters is that you as a *guerrero* of La Nuestra Familia are living up to your responsibilities. Remember that a true *guerrero* does not need to boast of his accomplishments.

Section VII. Under no circumstances is any of this constitution to be altered without notification of el NG and one-third of his captain's staff, nor shall a *familiano* or *familianos* regiment put their own interpretations upon said constitution. It is to be read in its entirety. All sections that relate to one concept are to be read as such.

## References

- 60 Minutes: Maximum Security? Airdate: 05/15/2005.
- Abe, Hiroko. 1983. "A Cross-Cultural Confirmation of the Dimensions of Intercultural Effectiveness," 7 *International Journal of Intercultural Relations* 53–67.
- Akerlof, George. 1997. "Social Distance and Social Decisions," 65 *Econometrica* 1005–27.
- Anderson, Annelise. 1979. *The Business of Organized Crime: A Cosa Nostra Family*. Palo Alto: The Hoover Institution.
- Arlacchi, Pino. 1986. *Mafia Business: The Mafia Ethic and the Spirit of Capitalism*. London: Verso.
- Baumol, William. 1995. "Discussion," in F. Fiorentini and S. Peltzman, eds., *The Economics of Organised Crime*. New York: Cambridge University Press.
- Becker, Gary. 1968. "Crime and Punishment: An Economic Approach," 76 *Journal of Political Economy* 675–700.
- Benson, Bruce. 1990. *The Enterprise of Law: Justice without the State*. San Francisco, CA: Pacific Research Institute for Public Policy.
- Berton, Justin. 2003. "Sir Dyno's Deal with the Devil: Rapper David Rocha thought a *norteno* gangsta CD was his ticket to glory—not life in prison," *East Bay Express News*, October 1.
- Bowker, Lee. 1980. *Prison Victimization*. New York: Elsevier North Holland.
- Buchanan, James. 1999. "In Defense of Organized Crime?," in G. Brennan, H. Kliemt, and R. Tollison, eds., *Federalism, Liberty, and the Law*. Indianapolis: Liberty Fund.
- Buchanan, James, and Gordon Tullock. 1999. *The Calculus of Consent: Logical Foundations of a Constitutional Democracy*. Indianapolis: Liberty Fund.
- California Department of Justice. 2003. Organized Crime in California: Annual Report to the California Legislature 2003.
- . 2004. Organized Crime in California: Annual Report to the California Legislature 2004.
- Chang, Juin-Jen, Huei-Chung Lu, and Mingshen Chen. 2005. "Organized Crime or Individual Crime? Endogenous Size of a Criminal Organization and the Optimal Law Enforcement," 43 *Economic Inquiry* 661–75.
- Dick, Andrew. 1995. "When Does Organized Crime Pay? A Transaction Cost Analysis," 15 *International Review of Law and Economics* 25–45.
- Federal Bureau of Investigation. 2008. Freedom of Information and Privacy Acts Subject file: La Nuestra Familia ([http://foia.fbi.gov/filelink.html?file=/lanuestrafamily/lanuestrafamily\\_part01.pdf](http://foia.fbi.gov/filelink.html?file=/lanuestrafamily/lanuestrafamily_part01.pdf)).
- Fuentes, Nina. 2006. *The Rise and Fall of the Nuestra Familia*. Know Gangs Publishing, Jefferson, WI.
- Fiorentini, Gianluca, and Sam Peltzman, eds. 1995. *The Economics of Organised Crime*. Cambridge: Cambridge University Press.
- Gaes, Gerald, Susan Wallace, Evan Gilman, Jody Klein-Saffran, and Sharon Suppa. 2002. "The Influence of Prison Gang Affiliation on Violence and Other Prison Misconduct," 82 *The Prison Journal* 359–85.
- Gambetta, Diego. 1993. *The Sicilian Mafia: The Business of Private Protection*. Cambridge: Harvard University Press.
- Gangland: Aryan Brotherhood. Aired on 6/24/2007.
- Garoupa, Nuno. 2000. "The Economics of Organized Crime and Optimal Law Enforcement," 38 *Economic Inquiry* 278–88.
- Grann, David. 2004. "The Brand: How the Aryan Brotherhood Became the Most Murderous Prison Gang in America." *The New Yorker*. February 16.
- Hunt, Geoffrey, Stephanie Riegel, Tomas Morales, and Dan Waldorf. 1993. "Changes in Prison Culture: Prison Gangs and the Case of the 'Pepsi Generation'," 40 *Social Problems* 398–409.
- Jankowski, Martin Sanchez. 1991. *Islands in the Streets: Gangs and American Urban Society*. Berkeley: University of California Press.
- Jennings, William. 1984. "A Note on the Economics of Organized Crime," 10 *Eastern Economic Journal* 315–21.

- Kaminski, Marek. 2004. *Games Prisoners Play: The Tragicomic Worlds of Polish Prison*. New Jersey: Princeton University Press.
- Knox, George, and Leslie Fuller. 2004. "The Gangster Disciples: A Gang Profile," in G. Knox and C. Robinson, eds., *Gang Profiles: An Anthology*. Peotone: National Gang Crime Research Center.
- Koehler, Robert. 2000. "The Organizational Structure and Function of La Nuestra Familia within Colorado State Correctional Facilities," 21 *Deviant Behavior: An Interdisciplinary Journal* 155–79.
- Konrad, Kai, and Stergios Skaperdas. 1998. "Extortion," 65 *Economica* 461–77.
- Leeson, Peter. 2007a. "An-arrrgh-chy: The Law and Economics of Pirate Organization," 115(6) *Journal of Political Economy*.
- . 2007b. "Trading with Bandits," 50 *Journal of Law and Economics* 303–21.
- . 2008a. "The Calculus of Piratical Consent: The Myth of the Myth of Social Contract." Working Paper, George Mason University.
- . 2008b. "The Invisible Hook: The Economics of Pirate Tolerance." Working Paper, George Mason University.
- . 2008c. "Laws of Lawlessness," *Journal of Legal Studies* (forthcoming).
- . 2008d. "Pirational Choice: The Economics of Infamous Pirate Practices." Working Paper, George Mason University.
- . 2008e. "Social Distance and Self-Enforcing Exchange," 37(1) *Journal of Legal Studies* 161–88.
- Levitt, Steven, and Sudhir Venkatesh. 2000. "An Economic Analysis of a Drug-Selling Gangs Finances," 115 *Quarterly Journal of Economics* 755–89.
- Lewis, George. 1980. "Social Groupings in Organized Crime: The Case of La Nuestra Familia," 1 *Deviant Behavior: An Interdisciplinary Journal* 129–43.
- Lubrano, Alfred. 2007. "Unconventional Wisdom: Get Real Rules for American Mobsters." *The Philadelphia Inquirer*, November 17, E1.
- Lynem, Julia. 1999. "Suspects With Gang Ties Arraigned in Slayings; Nuestra Familia involved, court records say." *The San Francisco Chronicle*. Peninsula Edition, October 29, A17.
- NuestraFamiliaOurFamily.org, "Salinas Police Report: Case Number 01-051612 (2001)," <http://nuestrafamiliaourfamily.org/documents/ramirez.pdf>. *Nuestra Familia, Our Family* (Center for Investigative Reporting 2005) (PBS television broadcast 2007).
- Pinkerton v. United States, 328 U.S. 640 (1946).
- People v. Garnica, 175 Cal. Rptr. 521, 522-23 (5th Dist. Ct. App. 1981).
- Powell, Benjamin, Ryan Ford, and Alex Nowrasteh. 2008. "Somalia After State Collapse: Chaos or Improvement," *Journal of Economic Behavior & Organization* (forthcoming) 67.
- Putnam, R. 2000. *Bowling Alone*. New York: Simon & Schuster.
- Radford, R. 1945. "The Economic Organisation of a P.O.W. Camp," 12 *Econometrica* 189–201.
- Reuter, Peter. 1983. *Disorganized Crime: The Economics of the Visible Hand*. Cambridge: MIT Press.
- . 1987. *Racketeering in Legitimate Industries: A Study in the Economics of Intimidation*. Santa Monica: The Rand Corporation 41.
- Reynolds, Julia. 2008. "Gang Leader Took Unusual Route to the Top." *Monterey County Herald*, February 10.
- Sandza, Richard, and Elaine Shannon. 1982. "California's Prison Gang." *Newsweek*, February 1, 74.
- Schelling, Thomas. 1971. "What is the Business of Organized Crime?" 20 *Journal of Public Law* 71–84.
- Skaperdas, Stergios. 2001. "The Political Economy of Organized Crime: Providing Protection when the State does Not," 2 *Economics of Governance* 173–202.
- Skaperdas, Stergios, and Constantinos Syropoulos. 1995. "Gangs as Primitive States," in G. Fiorentini and S. Peltzman, eds, *The Economics of Organised Crime*. New York: Cambridge University Press.
- Sobel, Russell, and Brian Osoba. 2008. "Youth Gangs as Pseudo-Governments: Implications for Violent Crime," *Southern Economics Journal* (forthcoming).
- Stringham, Edward. ed. 2007. *Anarchy and the Law: The Political Economy of Choice*. Oakland: Independent Institute.

- Sutter, Daniel. 1997. "Enforcing Constitutional Constraints," 8 *Constitutional Political Economy* 139–50.
- Task Force on Organized Crime. 1967. President's Commission. United States Superintendent of Documents. Washington, D.C.
- Tullock, Gordon. 2005. *The Social Dilemma*. Indianapolis: Liberty Fund.
- Vasquez v. McGrath, No. CIVS021925DFLKJMP, 2005 WL 2001020, at \*1-3 (E.D. Cal. 2005).
- Weingast, Barry. 1995. "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development," 11 *Journal of Law, Economics, and Organization* 1–31.